

**REMARKS**

Applicants thank the Examiner for the very thorough consideration given the present application.

Claims 1-10 are now present in this application. Claims 1, 7 and 8 are independent.

Amendments have been made to the Abstract of the Disclosure and claims 1, 5, 7 and 8 have been amended. Claims 7 and 8 have been re-written in independent form. Reconsideration of this application, as amended, is respectfully requested.

**Priority Under 35 U.S.C. § 119**

Applicants thank the Examiner for acknowledging Applicants' claim for foreign priority under 35 U.S.C. § 119, and receipt of the certified priority document.

**Drawings**

Applicants acknowledge the Examiner's indication on the Form PTO-326 that the drawings are accepted.

**PTO-892 Notice of References Cited**

Applicants note that the Examiner has not listed the Gold reference

GB 2280829 on the form PTO-892. The Examiner is requested to make this reference of record by listing it on a PTO-892 in the next Office Action.

Election of Species Requirement

The Examiner has made the Election of Species Requirement final, and has withdrawn claims 3 and 4 from further consideration. Applicants have not canceled these non-elected claims since each of these claims depends, either directly or indirectly, from independent generic claim 1, which is believed to be allowable for reasons started below. Upon allowance of independent claim 1, Applicants respectfully request examination and allowance of these withdrawn claims.

Objection to the Abstract of the Disclosure

The Examiner has objected to the Abstract of the Disclosure because of the use of legal phraseology.

In order to overcome this objection, Applicants have amended the Abstract of the Disclosure to delete the legal phraseology. Accordingly, reconsideration and withdrawal of this objection are respectfully requested.

Claim Amendments

Applicants have amended claims 1, 5, 7 and 8 to place them in more idiomatic English. Claim 1 has also been amended to clarify that the door, which is rotatably mounted (hinged) at one side, rotates about an axis formed by the side frame.

Rejection Under 35 U.S.C. § 102

Claims 1 and 5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 4,861,956 to Courneya. This rejection is respectfully traversed.

A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

A prior art reference anticipates the subject of a claim when the reference discloses every feature of the claimed invention, either explicitly or inherently (see, In re Paulsen, 30 F.3d 1475, 1478, 1479, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994), In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990), Hazani v. Int'l Trade Comm'n, 126 F.3d 1473, 1477, 44 USPQ2d 1358, 1361 (Fed. Cir. 1997) and RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

During patent examination the PTO bears the initial burden of

presenting a *prima facie* case of unpatentability. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444(Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788(Fed. Cir. 1984). If the PTO fails to meet this burden, then the applicant is entitled to the patent.

Claim 1, recites that the door rotatably combined, i.e. hinged, at a side of the casing. Courneya's microwave steam sterilizer's door 8 is not hinged at the side of the cabinet, as recited. Instead, Courneya's microwave steam sterilizer is hinged at the bottom of the cabinet – see Fig. 1, for example.

Accordingly, Courneya does not anticipate the claimed invention.

Reconsideration and withdrawal of this rejection of claims 1 and 5 are respectfully requested.

#### Rejections under 35 U.S.C. §103

Claims 2 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Courneya in view of GB 2280829A to Gold. This rejection is respectfully traversed.

A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

During patent examination the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444(Fed. Cir. 1992); *In re Piasecki*, 745 F.2d

1468, 1472, 223 USPQ 785, 788(Fed. Cir. 1984). If the PTO fails to meet this burden, then the applicant is entitled to the patent.

A rejection must be based on objective evidence of record, not merely conclusionary statements of the Examiner. See, In re Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). The Office cannot shift its burden of making a *prima facie* case of obviousness of the claimed invention by referring to unobvious or unexpected results or by speculating that a claimed feature is a mere design choice.

An Examiner may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis required to make a proper rejection under the statutes, See, In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968).

In the first place, Applicants point out that Courneya does not disclose the feature of the door hinged at a side of the cabinet.

In the second place, Gold does not use a hinged door. Gold's microwave oven door is a sliding door, which is in no way hinged or "rotatably combined" with the microwave oven cabinet. So even if it were obvious to modify Courneya in view of Gold (which has not been demonstrated), the resulting modification of Courneya would not have a hinged door, as recited, or, if it did, it would not be hinged at a side of the cabinet.

While Gold uses a curved hinged lid 12 as part of its cabinet housing 1, lid 12 is not a door. It is only disclosed as a portion of the housing 1 lying behind and above the door 2, and is not disclosed as being transparent. Presumably, as part of the cabinet housing 1, lid 12 is made of opaque metal. Only door 2 is disclosed as being made of transparent microwave-blocking glass.

In the third place, Gold's door is rounded to permit the door to slide up and down in tracks 25. A benefit of this rounded feature is taught to be enhanced visibility while standing rather than necessitating crouching. However, Applicants have found no disclosure in Gold of a hinged microwave door, either in general, or at a side of the cabinet, as recited. This failure to disclose or suggest a rounded hinged door in a reference that teaches a rounded door actually teaches away from using a rounded door hinged at its side.

A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. See United States v. Adams, 383 U.S. 39, 52, 148 USPQ 479, 484 (1966); W.L. Gore & Assoc., Inc. v. Garlock, Inc., 721 F.2d 1540, 1550-51, 220 USPQ 303,311 (Fed. Cir. 1983) (the totality of a reference's teachings must be considered), cert. denied,

469 U.S. 851 (1984); In re Sponnable, 405 F.2d 578, 587, 160 USPQ 237, 244 (CCPA 1969); In re Caldwell, 319 F.2d 254, 256, 138 USPQ 243, 245 (CCPA 1963) and In re Gurley, 31 USPQ2d 1130 (Fed. Cir. 1994).

Applicants respectfully submit that the differences between the applied references teach away from combining them, as suggested.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Courneya in view of U.S. Patent 5,726,427. This rejection is respectfully traversed.

A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

Courneya does not disclose the claimed invention of claim 1 from which claim 10 depends, for reasons stated above.

The Office Action admits that Courneya also does not disclose a cutting portion formed at an inner wall surface of the doorframe.

In an attempt to remedy this admitted deficiency, the Office Action turns to Hwang, a reference that, like Courneya, does not disclose a cutting portion formed at an inner wall surface of the doorframe.

Instead, Hwang discloses a microwave oven door hinge 40 that has a slit 48 designed to accommodate a vertical outer flange or flank 60 of the microwave oven door 50 when the door is fully opened. Hinge slit 48 is not "formed at an inner wall surface" of Hwang's door frame and is not part of

Hwang's door frame. Rather, Hinge slit 48 is formed on an entirely separate element, hinge 40, than Hwang's door 50 and has nothing to do with an inner wall surface of Hwang's door frame.

Because Hwang's microwave door inner wall surface does not have a cutting portion, one would have no incentive to provide a cutting portion in the inner wall surface of any microwave door, including the microwave door of Courneya. Nor has the Office Action demonstrated by objective factual evidence that would one of ordinary skill in the art would not be motivated to modify the inner wall surface of Courneya's door frame based on Hwang's hinge pattern, because it has not demonstrated the relevance of a hinge pattern cutout to permit a microwave door to fully open to constructing a microwave door itself.

Furthermore, Courneya does not disclose that it has a deformed door problem to be solved by redesigning its hinge or its interior wall surface.

Accordingly, the Office Action fails to make out a prima facie case of obviousness of the claimed invention.

#### Allowable Subject Matter

The Examiner states that claims 7-9 would be allowable if rewritten in independent form.

Applicants thank the Examiner for the early indication of allowable

subject matter in this application. Claims 7 and 8 have been re-written in independent form. Claim 9 depends from claim 8. Accordingly, Applicants respectfully submit that claims 7-9 are allowable.

Additional Cited References

Because the remaining references cited by the Examiner have not been utilized to reject the claims, but have merely been cited to show the state of the art, no comment need be made with respect thereto.

**CONCLUSION**

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Robert J. Webster, Registration No. 46,472, at (703) 205-8000, in the Washington, D.C. area.

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Reply filed: January 19, 2005  
Art Unit 3742

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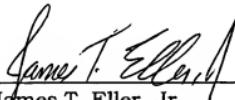
Prompt and favorable consideration of this Amendment is respectfully requested.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

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Attachment: Abstract of the Disclosure